



# City of Carmel

## **Carmel Advisory Board of Zoning Appeals Regular Meeting Monday, July 25, 2005**

The regularly scheduled meeting of the Carmel Board of Zoning Appeals met at 6:00 PM on Monday, July 27, 2005, in the Council Chambers of City Hall, Carmel, Indiana. The meeting was called to order at 6:15 PM with the Pledge of Allegiance.

Members in attendance were Leo Dierckman, James Hawkins, Kent Broach and Earlene Plavchak, thereby establishing a quorum. Angie Conn, Nathan Anderson and Mike Hollibaugh represented the Department of Community Services. John Molitor, Legal Counsel, was also present.

Mr. Dierckman moved to approve the minutes of the previous meeting. The motion was seconded by Mrs. Plavchak and **APPROVED 4-0.**

### **F. Communications, Bills and Expenditures**

Ms. Conn announced that items 1-5h would need a motion to suspend the rules because the public notice was one day late. Mr. Dierckman moved to suspend the rules. Seconded by Mr. Hawkins and unanimously approved.

### **G. Reports, Announcements, Legal Counsel Report and Department Concerns**

Mr. Molitor reminded those present of the Executive Session following this regular meeting. Three of the [BZA] members will be participating in that and the fourth member will need to recuse himself.

### **H. Public Hearing.**

#### **1-5h. Davis & Bales, lots 7pt-8: The Deacon Restaurant**

The applicant seeks use variance approval for a restaurant and seeks the following development standards variances:

<b>Docket No. 05050028 UV</b>	<b>ZO Chapter 8.01</b>	<b>permitted uses</b>
<b>Docket No. 05050029 V</b>	<b>ZO Chapter 25.07.02-08.b</b>	<b>number of signs</b>
<b>Docket No. 05050030 V</b>	<b>ZO Chapter 25.07.02-08.b</b>	<b>two signs oriented west</b>
<b>Docket No. 05050031 V</b>	<b>ZO Chapter 25.07.02-08.b</b>	<b>one sign oriented south</b>
<b>Docket No. 05050032 V</b>	<b>ZO Chapter 27.05</b>	<b>reduced parking spaces</b>

The site is located at 31 First Street SE and is zoned R-2/Residence within the Old Town Character Sub area. Filed by Mark Demerly of Demerly Architects for EF Holding, LLC.

Present for the Petitioner: Mark Demerly of Demerly Architects, 6144 N. Park Avenue, Indianapolis and Jimmy Dulin, owner of the building, 12020 Eden Glen Drive, Carmel, Indiana.

Mr. Demerly: We are requesting a variance of use for the existing property which in the past has been zoned R-2 and we're seeking a variance of use for the restaurant itself. The second item is for parking. We are not able to accommodate the parking on our site and we have discussed with Mayor Brainard and Les Olds using some adjacent property which is being developed by the City and that would provide some necessary parking spaces for our lot. The third one is for the variance for signage. We are seeking three signs for the building.

The building is the old Methodist Church, one of the most historical buildings in downtown Carmel. Mr. Dulin has purchased the building with the idea of creating a restaurant. We are restoring the building. We had McComas Engineering look at the project and they have stated that it is a sound building. We are working with the existing structure, restoring the exterior. We will not be restoring the steeple which has been relocated to the other Methodist Church on Range Line. [Mr. Demerly showed and explained for the restoration.] We will be installing onion domes.

The parking lot [being built by the City] is across from 31 First Street SE. What we are proposing is we have an occupancy of 250 people with the staff people. The Code would require us to provide 125 parking spaces. We are seeking a 50% reduction. It does sit inside the historic district of downtown which is a part of the zone improvements. We would need 62. We're providing eight on site, which includes handicapped parking as well as staff. In addition to the parking across the street, the owner will be providing valet parking during evening hours to accommodate parking across the way and at other parking lots in adjacent areas. The parking is in the back, there are four handicapped and five others which includes the one in front of the dumpster which would only be for after hours situations.

Mr. Demerly showed a computer rendering of the building.

The outside, lower portion of the steps, will be kept in place and we're adding a low wall for the outdoor terrace area which will be at the front of the building. The walls along the side are for handicapped accessibility up to the upper level since this is raised 6' out of the ground.

Signs will be placed in the belfry openings. They will be opaque bronze metal and within that would be the name of the restaurant that would be taking up less than 10% of the sign itself. It would be laser cut out and back lit. That would be the extent of the actual visible sign. The rest would just be a hammered bronze copper finish that replicates the arched opening of the belfry up above. This would be located on the north, west and south sides. The finish will create a patina. We do not have the graphics yet. The overall diameter of the signs is around 8'.

Members of the public were invited to speak in favor or opposition to the petition.

Joyce Axelson, 22 Lakeshore Court, Carmel: I am part owner of the building directly west of this property and I am not opposed to it. I have some concerns. I'm all for them renovating this building and getting it back to what it should be, but the parking, I'm afraid is going to be an issue. The proposal is that they'll park across the street and use the Lions [Club] parking lot. We have lots and I don't intend to supply parking for a business directly next door. That's only an 8' alley there and so there can't be any parking on that alley. Another concern I have is this property is not zoned commercial. I think they only paid \$600 a year real estate taxes. We pay a lot more than that on a vacant grassy lot. And I think we need to get the zoning, it should be zoned commercial. I don't think, there's no reason why it shouldn't be, and so that we can get the tax base for the community. And this is not the only property that is being used for commercial purposes that is not zoned commercial and the tax base isn't there. So I think that's important for the City. You need your tax base. And also the owner of this building needs to have it zoned commercial in that if he ever goes to sell it, nobody's going to want to buy it unless it's zoned properly as commercial. But our foremost thought should be for the City, getting the proper tax base.

The third thing I wanted to mention, the City owns that property across the street where they are going to put the parking lot. That little house is full of raccoons and rodents and you name it. Once that goes to be torn down those animals will have to go someplace. They need to be trapped properly before any demolition takes place. I own another property on First Avenue SE and the raccoons from that property went to my property, cost me \$1000 last year to have them removed. I realize that's not part of the zoning, but I think that information needs to be relayed back so otherwise all these businesses and residences are going to be infested with these animals. That's all I have to say. Any questions for me?

Mr. Demerly responded: We did meet with Joyce and her daughter and we agree in regard with respect to the parking. We're concerned as well. We don't want our patrons to go over into that lot. And we will enter an agreement with her, may post signs. We don't think that will be a problem and we will take care of having the cars removed if that becomes an issue.

The issue in regards to the zoning, we're not necessarily saying that we're trying to avoid anything. The staff recommendations was that we go for a variance of use instead of a rezoning, so that's what we have sought. I'm not sure with the variance if we'll be taxed at what level, so that might be a clarification that we'll need from staff.

The Public Hearing was closed.

Ms. Conn said she would find out how the tax situation works with the rezoning versus a use variance. She will find out and send an email tomorrow.

Mr. Molitor said the zoning should not affect the assessment. The assessment should be based on the use of the property at the time. Occasionally someone will attempt to use that in an appeal, but it generally would not affect the result of the assessment process.

Ms. Conn stated the City and the Department are also in favor of the parking variance. There will be the off site parking to the north and any overflow parking can be at the Lions Club site. In regards to signage, it seems to be more of an architectural element that they are responding to and the Department is in favor of that. With that the Department recommends positive consideration of all dockets.

Mr. Broach: Is the parking across the street was going to be a parking garage or just a lot? You're promised certain spaces there?

Mr. Demerly: We had originally considered making an offer to buy that ground thinking that we would have to provide our own parking. I was contacted by Les Olds and the City had also entered into a contract to purchase that piece of property. They said at that point in time if we wanted to purchase it we could, because they didn't want to step on our toes, but as far as the parking, they were going to need that parking for public. So they said basically I can build it and provide it as public or they can build it and provide it as public. So naturally we backed out of it. We're not guaranteed any spots. There's going to be 127 spots. It's directly across the street and two blocks up there's the Lions Club. Our intentions are to utilize what parking is available. If it does not become available then we're going to use the one up the street at the Lions Club. It's my understanding that that lot also has future expansion.

Mr. Dierckman: Do you have any better insight into the signage?

Mr. Demerly: Again I apologize for not being able to bring more of the final element. If you look at the A 4.1 and A 4.2, those are some very preliminary studies for what the signs are going to be. They are 8' diameter dishes, slightly bowed, in a metal material. The letters carrera will be on the front approximately 2' tall and laser cut into the metal itself and then a clean lens installed behind the material and then it would be illuminated from internal. What we asking you to look at is not the whole disk, but the central element which only makes up 10% of the overall surface of the disk.

We're talking script type lettering. The whole mode of this is we wanted it to blend in, no flashy lights, no neon, nothing like that.

Question was asked whether this was inside the Redevelopment Area. Answer: It's just outside of it.

Mr. Dierckman: I'm thrilled that you're doing this. I'm very happy with the whole concept. Everybody else in that area is rather limited on the signage and now you're talking about a tower with three signs on it. I don't remember how visible that signage is going to be throughout Old Town.

Mr. Demerly: That's going to vary greatly on what happens in the future with Joyce's property because theirs is up for sale. Who knows what's going to be built there at some point in time. It could be that you won't see us if we had ten of them.

Mr. Dierckman: I think the key here is 1. that the signage instead of being applied as a face, it's integrated more as part of the architectural elements. I understand it is unusual for this many signs and I understand the problems of reviewing this sort of thing, but we want to affirm that you're really looking at a very small overall signage.

Ms. Plavchak: What is it going to say on the disks?

Mr. Demerly: J. L. Carrera. The name of the restaurant has changed from when we originally had applied.

In response to a question whether it was on one line or two, the petitioners said they had not yet received the logo.

Ms. Plavchak asked if there would be any kind of ground sign. Answer was no.

Mr. Hawkins asked if it was only the letters which were going to be backlit, not the whole dome. Answer was only the letters. He asked if the lower level was going to be just 7'?

Mr. Demerly: No. Along the west side there is a slight grading up to the building which goes up about 2'. We'll be cutting that grading down and there will be openings down below going into the basement which will end up having 9' ceilings.

Mr. Hawkins asked that the petitioners come back to the Hearing Officer process for the sign lettering.

Mr. Molitor asked what criteria the Hearing Officer would use to approve or disapprove. Mr. Dierckman said it would just be what the lettering ultimately is so it matches the design of the building.

Mr. Molitor recommended they make a commitment to have the signage reviewed as if the signage were a special use to be approved by the board, through the Hearing Officer process. The petitioners agreed to this.

Mr. Dierckman moved to approve **Docket No. 05050028 UV, Docket No. 05050029V – Docket No. 05050032V, Davis & Bales, Lots 7pt-8: The Deacon Restaurant.** The motion was seconded.

**Docket No. 05050028 UV, Docket No. 05050029V – Docket Nos. 05050032V, Davis & Bales, Lots 7pt-8: The Deacon Restaurant were APPROVED 4-0.**

**6-7h. West Carmel Center Office Park, Ph I (West Carmel Center, Blk E)**

The applicant seeks the following development standards variance approvals:

<b>Docket No. 05060016 V</b>	Chapter 23C.10	bufferyard requirements
<b>Docket No. 05060017 V</b>	Chapter 23C.09.D	facade offset

The site is located southeast of Commerce Dr. and Carwinion Way. The site is zoned B-5/Business. Filed by Mike Jett of American Consulting, Inc. for Coastal Partners, LLC.

Present for the petitioner: Larry Kemper, Nelson & Frankenburger, Carmel, representing Coastal Partners, LLC, with regard to two developmental standards variance requests this evening. Also present on behalf of Coastal Partners is Fred Keeshan, President of Coastal Partners, Alan Satahajek, American Consulting Engineers and Paul Myer of JRA Architecture.

The subject property is located on Commerce Drive, outlined in yellow on aerial photograph, south of 106<sup>th</sup> Street and east of Michigan Road. Surrounding uses include the Super Target Center to the immediate west of the site, various commercial and retail uses to the north and south and to the immediate east is a residential subdivision. The real estate is presently zoned B-5, business district.

By way of background, Coastal Partners is proposing an office building complex consisting of four buildings, each of which is approximately 8,000 square feet in area. In connection with the various requests which are the subject of tonight's hearing, Coastal Partners has also applied for and received development plan and architectural design, landscaping, lighting and signage approval for this four building office complex. Those approvals were received at the July 19 Plan Commission meeting. As indicated in the informational brochures and the department report, Coastal Partners is seeking two variances: the first of which is a variance of a 25' wide area of landscaping along the entire width of the rear yard lot line and the second is a variance from the U.S. 421 Michigan Road Corridor Overlay Zone requirement that buildings having a continuous façade of 90' or greater in width shall be designed with offsets projecting not less than 8'. In looking at the aerial photograph, there's a wet retention pond that surrounds the entire eastern portion of real estate and due to that the rear yard lot line is under water.

Also looking at the colored site plan, there is insufficient space between the rear portion of buildings one and two between that and the wet retention pond in which to meet the 25' wide landscape buffer yard requirement. Strict application in terms of the zoning ordinance to the real estate will result in practical difficulty in the use of the property because the landscaping will have to be planted under water. Coastal Partners is planting the amount of plant material as required under the ordinance. They are simply moving that plant material away from the rear yard lot line and closer to the rear of the buildings. The purpose of this requirement is to provide a significant buffer between an office use in this case and adjoining residential uses.

In looking at the renderings under Tab 8 of your brochure, which are displayed here, we believe the placement of the landscaping in connection with the variance and also the existence of the wet retention pond provides a superior buffer for surrounding residential uses as compared to that which would be found under a strict application of the ordinance even in the absence of the wet retention pond.

As I indicated earlier, the second request is a variance from the U.S. 421 Michigan Road Corridor Overlay Zone requirement that buildings having a continuous façade of 90' or greater in width shall be designed with offsets projecting not less than 8' deep. In looking at the building elevation shown before you now, Coastal Partners is proposing a building offset projecting 4' instead of the 8' required under the overlay. The purpose of this requirement under the overlay is to prevent long unbroken building facades that create visual monotony. The concern with that along this portion of the Michigan Road Corridor is that there would be long commercial or retail buildings such as the Super Target Center which are not aesthetically pleasing to look at. While this requirement has achieved that purpose with great success along the Michigan Road Corridor, it really would not be fulfilled by imposing that requirement on this particular parcel of real estate. There are a couple of reasons for that. First, the subject real estate is located more than 800' east of the eastern right-of-way line of Michigan Road, second, viewing the office buildings on this particular site, will be significantly impaired if not completely obscured by other commercial development along the corridor, such as the Super Target Center. There are other buildings in the vicinity and there will be additional buildings constructed in the future. Third, the strict application of this 8' building bump-out requirement on the buildings in this complex will result in practical difficulties in the use of the real estate because if it were imposed on this particular site it would require Coastal Partners to reconfigure the site.

The 8' building bump-out requirement is also a function of proportions. Again, the original intent of the ordinance was to avoid long, unbroken large commercial buildings that are visually monotonous. In the present case, the buildings which are subject to this request are much smaller buildings in scope and size. There are four buildings, each of which are approximately 8,000 square feet in area. The strict application in this zoning ordinance in this particular case would actually create a disproportionately large bump-out relative to the size of each of these buildings. This would detract from the overall aesthetics of the buildings and would really not serve the purpose of the requirements set forth in the overlay.

So in concluding, we believe the elevations set forth displayed showed the appearance of the proposed office buildings including a bump-out of only four feet display a greater sense of proportion and promote a more appealing appearance for the buildings than otherwise you would find under a strict application of the ordinance.

Any questions?

Members of the public were invited to speak in favor or opposition to the petitions; no one appeared.

#### Department Report

Ms. Conn reported the Department recommended positive consideration of both docket numbers. The detention pond on site actually serves as a type of buffer from the adjoining neighborhood. The bump-outs being reduced to four feet will still serve as the architectural façade bump-outs that would help provide relief on the building façade.

Mr. Dierckman stated this had gone through the Plan Commission and representatives from the neighborhood were present and were very happy with the project. They felt the pond served as a quality buffer between the big box south and adjacent to this property. It came out of Plan Commission favorably. You've done a good job with this project.

The same amount of landscaping as would have been originally required and it's actually even better because if it were where it's supposed to be, it would be below grade. It would be down by the shore.

Mr. Kemper: Correct. In a way, it's even a larger buffer.

Mr. Dierckman moved to approve **Docket No. # 05060016 V and Docket No. 05060017V, West Carmel Center Office Park, Phase I, Block E**. Seconded by Ms. Plavchak.

Mr. Molitor was asked if the rules were changed so "we didn't all have to sign these".

Mr. Molitor: You only need to vote yes or no on the motion. You do not need to fill out the findings of fact. Those should be incorporated into the motion.

**Docket No. 05060016 V and Docket No. 05060017V, West Carmel Center Office Park, Phase I, Block E were APPROVED 4-0.**

#### **8-10h. Murphy Hall: Amenity Area**

The applicant seeks the following special use & development standards variance approvals:

<b>Docket No. 05060018 SU</b>	<b>Ch. 5.02</b>	<b>special use</b>
<b>Docket No. 05060019 V</b>	<b>Ch. 25.17.01</b>	<b>swimming pool size</b>
<del><b>Docket No. 05060020 V</b></del>	<del><b>Ch. 25.02.10</b></del>	<del><b>lifeguard requirement</b></del> <b>WITHDRAWN</b>

The site is located at the NW corner of 141st Street and Towne Road and is zoned S-1/Residence. Filed by Jim Shinaver for Estridge Development Co.

Present for the petitioner: Larry Kemper, Nelson & Frankenberger Law Firm, Carmel, representing the Estridge Development Company. Present from on behalf of Estridge is Lori North, Director of Land Development. We are here before you seeking special use approval to construct a swimming pool in an amenity area which will serve the residents of a residential subdivision and also a variance regarding the minimum size required for the neighborhood pool.

I should note that when the applications were originally submitted, Estridge was also seeking a variance from the requirement that a lifeguard be present during pool hours. However, after the variances were filed, Estridge notified the planning staff that they were withdrawing that particular variance request. Consequently, please keep in mind as I make the presentation, Estridge has committed to and will comply with that requirement of having a lifeguard on duty during pool hours.

The first exhibit is the aerial photograph of the real estate. It depicts the perimeter boundary of the real estate which consists of approximately 55.327 acres located at the northwest corner of 141<sup>st</sup> Street and Towne Road here in Carmel. Estridge recently obtained primary plat approval to develop the real estate as a residential subdivision to be known as Murphy Hall, which will consist of 82 residential lots as well as an amenity area that will include a pool, a basketball court, a pool house and a playground and associated parking. The Plan Commission has already reviewed and approved the site design and building elevations as it relates to this amenity area and the pool.

The second exhibit is the southern portion of the site plan which depicts the location of the amenity area. As you can see, the amenity area pool and pool house are located in the southern portion of Murphy Hall near the entrance off of 141<sup>st</sup> Street.

This next exhibit is a site plan of the amenity area itself. As you can see, the pool house is located here. There's the pool. This is the playground. Half court basketball court and associated parking.

This exhibit is a rendering of the pool house itself. The elevations for this pool house were approved by the Plan Commission.

This final exhibit is a rendering of the actual pool itself. Per the ordinance a special use approval is required to construct a pool of this type intended to serve the residents of a neighborhood subdivision. Consequently we are seeking special use approval for this pool. In addition the ordinance also requires a pool of this type be a minimum of 2,000 square feet in area. However, because this is a relatively smaller subdivision with only 82 lots, Estridge is proposing a 1,500 square foot in lieu of the 2,000 square foot minimum. So in effect we're requesting a variance for a pool which is 500 square feet smaller than the minimum required under the ordinance.

Again as I stated in my introduction, Estridge is committed to having a lifeguard on duty during pool hours. We've delivered amended commitments to the Planning Department prior to this meeting. They haven't been signed yet, but they will be. Also, Estridge is going to construct a fence which complies with the ordinance. It will be 6' in height.

Any questions?

Members of the public were invited to speak in favor or opposition to the petitions; no one appeared.

#### **Department Report**

Ms. Conn said the Comprehensive Plan states that residential areas should be served by areas similar to this amenity area where it would have parks, playground, etc. The Department is in favor of that request and also the

variance for a 500 square feet in area that is a deficit from the required 2,000 square feet. The Department recommends positive consideration of both docket numbers with the condition that the Department receives a copy of the recorded commitments.

Mr. Hawkins asked if there was any lighting on the basketball court or the playground that would affect the surrounding houses. Or is it even developed?

Ms. North: [Unintelligible]... because we don't want to encourage them to be out there after dark. The pool house itself, around the overhang has a down lighting activated by a photo cell.

Mr. Hawkins asked if it was still proposed.

Ms. North responded that there are lots around it, but there isn't anything there right now.

Mr. Hawkins: On the north [unintelligible because of end of tape]. Okay. On the overhead it just kind of showed something drawn in. Any other questions?

Mr. Broach: You may have mentioned this, but the reason for the smaller pool is because it's a smaller subdivision, right?

Mr. Kemper: Primarily, right. Ultimately this will be turned over to the homeowners' association so this will result in somewhat of a cost savings to them in terms of maintenance.

Mr. Dierckman: We had a member at one point who wanted everybody to have their own swimming pool in their areas and we required a certain square footage as well as lifeguards. I actually think it's burdensome on the homeowners association and none of those people were able to be here to negotiate on their behalf because they hadn't sold any lots yet. We're going to continue to see people coming in asking for variances from the lifeguard requirement and then they're going to be upset because they have such a large pool for just a small number of homes. It's a lot of money to staff a pool. We'll start to see them come in now. I'm surprised you didn't ask for the no lifeguard because I think it just raises the dues and for that number of lots it's going to be very expensive.

Mr. Broach moved to approve Docket # 05060018 SU and Docket # 05060019V. Seconded by Mr. Dierckman.

**Docket No. 05060018 SU and Docket No. 05060019V, Murphy Hall Amenity Area were APPROVED 4-0.**

**I. Old Business**

There was no Old Business.

**J. New Business**

There was no New Business.

**K. Adjournment**

Motion made, seconded for adjournment and the meeting was adjourned at 7:20 p.m.

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James R. Hawkins, President

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Angelina Conn, Planning Administrator

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